

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BILL TASH**, on March 10, 1999 at 3:00 P.M., in Room 437 Capitol.

ROLL CALL

Members Present:

Rep. Bill Tash, Chairman (R)
Rep. Hal Harper, Vice Chairman (D)
Rep. Cindy Younkin, Vice Chairman (R)
Rep. Aubyn A. Curtiss (R)
Rep. Rick Dale (R)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)
Rep. David Ewer (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Dan McGee (R)
Rep. Douglas Mood (R)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney (D)
Rep. Bob Story (R)
Rep. Jay Stovall (R)
Rep. Carley Tuss (D)
Rep. Doug Wagner (R)

Members Excused: Rep. Rod Bitney (R)

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Deb Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 276, SB 429, SB 371, SB
383, 3/5/1999
Executive Action: SB 235, SB 97, SB 96

HEARING ON SENATE BILL 276

Sponsor: Sen. Dale Barry, SD 30, presented the bill. He said the bill would expedite drafting an easement across state land.
{Tape : 1; Side : A; Approx. Time Counter : 1.1}

Proponents: Rick Brown, General Manager of Ravalli County Electric and representing one of the 26 co-ops serving Montana, spoke in support of SB 276. He pointed out the use of the new technologies, such as GPS, would speed up the current process, cut costs to those seeking easements and expedite payments to the state for easements.

Ron Ausberg, representing Montana Independent Telecommunication Systems, spoke in support of the bill.

Jeff Hagener, Administrator for the Trust Land Management Division for the DNRC, supported the bill. He said the primary concern is in the accuracy, not necessarily the methodology, and this bill covers that.

Opponents: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor: Sen. Barry closed. He said the easement must be surveyed accurately. **{Tape : 1; Side : A; Approx. Time Counter : 4.8}**

HEARING ON SENATE BILL 429

Sponsor: Sen. Debbie Shay, SD 18, presented SB 429. She explained the bill dealt with airport subdivision. Currently, every lease has to go to subdivision review. Every time an airport authority writes a new lease or every time someone occupies a space, they have to go through this process. The process is costly and cumbersome for airport authorities and the taxpayers. **{Tape : 1; Side : A; Approx. Time Counter : 6.8 - 8.8}**

Proponents: Tom Ebzery, an attorney from Billings representing the Montana Airport Managers, spoke in support of the legislation. He distributed a definition of aeronautics **EXHIBIT (nah54a01)**. He said the definition was narrow. Airports across the state routinely lease or rent parcels of ground to the FAA or the U.S. Weather Service and many cases these parcels are fifty square feet for a weather observation piece of equipment or an approach and safety equipment for the airport. By letter of

the law, these should be going through subdivision. This bill would allow the safety items without the prolonged review of subdivision to get those in place.

Rick Griffith, representing the Butte Airport, said the bill was good for all airports. One of the concerns was environmental or subdivision review, however they get reviewed 67 different times, every single time they sign on a grant application. They have compliance with environmental, cultural, historical, EEO, etc. He described the Anaconda Airport who charges \$90 a year for a hangar space lease-\$5,000 for a subdivision review, how many of those \$90 hangars could they afford to do. He encouraged the committee to vote in favor of the bill.

Mike Fergeson, Administrator of the Aeronautics Division, spoke in support of the bill. He described the 14 state owned airports they operated. He said most airports in the state that were under development or under the federal grant program had to go through all the subdivision laws to meet all the federal standards already. Most all the things covered in the subdivision review are duplicates of what has already been done.

{Tape : 1; Side : A; Approx. Time Counter : 6.8 - 12.7}

Opponents: Janet Ellis, Montana Audubon, spoke against the bill. She described a story about the airport in Havre. She pointed out airports own more land than they develop and they could lease these. If they don't have to comply with the subdivision law then they don't have to comply with the public interest criteria in the subdivision law. The Havre airport was near a wetland and the ducks were a hazard so they had to fill the north pond. When there is a big project, they should go through subdivision review. ***{Tape : 1; Side : A; Approx. Time Counter : 12.7 - 14.4}***

Questions from Committee Members and Responses: Rep. McGee asked about government entities that try to avoid their own rules. He asked why the bill should be passed that would exempt the government, in this case airport authorities, from doing what the local government has already required every other land owner to do. Sen. Shay replied that any time there is over five lots they are subject to review. This bill applies narrowly. It is expensive and cumbersome for local governments to have to go through this every time. Rep. McGee pointed out these problems of compliance happen to every landowner out there. He noted how frustrating it was as a consultant to have to do battle for the private citizens out there on all these issues and the government doesn't care how much it costs or how long it takes at that point - but if they want to protect their little bailiwick it is a different matter. Sen. Shay pointed out the aeronautics had to go through a series of other things. This is cumbersome and

costly to the taxpayers. **{Tape : 1; Side : A; Approx. Time Counter : 14.4 - 18.5}**

Closing by Sponsor: Sen. Shay closed. She pointed out this comes from a dire need to address a critical issue. Rep. Dale will carry the bill.

HEARING ON SENATE BILL 371

Sponsor: Sen. Ken Mesaros, SD 25, presented the bill. He said the bill addressed ground water sources that are developed on another persons land to notify that person in advance of the proposed development. A neighboring land owner can develop water on neighboring land if it is a spring of 35 gallons or less. On completion of that project, the person developing that water can apply and be granted a permit on completion of the water project without the real property owner being notified or knowing this is happening. **{Tape : 1; Side : A; Approx. Time Counter : 18.5 - 22.2}**

Proponents: John Metropolis, representing the Flathead Board of Control-an umbrella organization for three irrigation districts, spoke in support of the bill. He said it was neighborly to provide notice. **{Tape : 1; Side : A; Approx. Time Counter : 22.2 - 23}**

Mike Murphy, Montana Water Resources Association, spoke in support of the bill.

Opponents: None.

Questions from Committee Members and Responses: Rep. Story asked for some examples. Sen. Mesaros described a case where a rancher from Belt owned the property and a second party filed rights to that water and it was granted. In this case, that party had the rights to the water on this other person's land. In a dry year or flow fluctuations when the rancher really needed the water for livestock use, he did not have the right.

Rep. Story asked Jack Stultz what the department determine was possessory interest. Stultz said possessory interest was the actual ownership of the property. A lease would not necessarily indicate permission to develop a water right. Additional documentation would be needed for a person to go forward. Rep. Story asked in light of the present statute if you can't get a water right without a possessory interest, how could this happen. Stultz replied there were two properties, one with the water source - the point of diversion, and the other property is the

place of use. This is a fundamental principal of western water law which is first in time, first in right. There is also prior appropriation and a riparian doctrine, which means the people should not have to be owners of a source of water in order to use that water. The department requires that they have permission. Permission could be indicated by an easement or by a letter of permission. Rep. Story said he could see how this would work on surface water but what about ground water. Stultz replied there was a need to clarify notification in law. **{Tape : 1; Side : A; Approx. Time Counter : 23 - 30.7}**

Closing by Sponsor: Sen. Mesaros closed. **{Tape : 1; Side : A; Approx. Time Counter : 45.5 - 45.8}**

HEARING ON SENATE BILL 383

Sponsor: Sen. Don Hargrove, SD 16, presented the bill. He said the bill would provide some options and incentives for landowners and local government to work together. He discussed an amendment. **EXHIBIT (nah54a02)** This provides some options for landowners who could develop. He explained that SB 97 addressed growth policies. If a county decides to have a growth policy, then a county can also designate a preservation area. You have development rights in an area that the county suggested be preserved. Those are called "unused transferrable development rights". A developer could buy some of the growth area and some of the development rights and build some things. This would stimulate good planning and provide some money for the landowner and provide for passing the land to his descendants. In order to do that, the planning process has gone through this growth area and jumped through some hoops already in the bureaucracy that will be bypassed. He described a developer who had subdivided hurriedly because of the difficulty and slow pace of the planning process. The outcome was twenty acre lots of fenced off knapweed. **{Tape : 1; Side : A; Approx. Time Counter : 45.8 - 55.3}**

Mary Vandebosch briefed the committee on the purpose of the amendments. She said the bill requires that a growth policy be adopted before a local government can adopt these special cluster development subdivision regulations. The reason for the growth policy, to require the effect of the subdivision in growth areas, are the public interest criteria. The public interest criteria found in 76-3-608 section 8 of the bill, cluster developments are exempted from the review of those criteria. This says that the governing body has to address those criteria in the plan and then they won't be addressed in the subdivision review process. Amendments 2-6 clarify that the review of a subdivision under the

special cluster development regulations, that are authorized by this bill, are optional. The subdivider can choose whether they want to have the proposed subdivision review done in a regular subdivision regulation, which fall under 76-3-504, or under the special cluster development regulations. Amendment 7 and 8 clarify that cluster development subdivision is not exempt from any other requirements of the subdivision and platting act except as provided in the section that lists specific exemptions. Amendments 9-11 remove an exemption for impact fees. Amendments 12 and 13 clarify that approval of a subdivision cannot be denied based solely on density levels for preservation areas identified in the growth policy for the purpose of transfer of development rights. She explained the last two amendments addressed concerns that the growth policy adopted for the purpose of the cluster development regulations would contain more information that might be used to deny a subdivision later on.

Sen. Hargrove distributed a grey bill, which included those amendments. **EXHIBIT (nah54a03)** He said the county could already waive impact fees so this was taken out of the bill. **{Tape : 1; Side : A; Approx. Time Counter : 52.7 - 60.5}**

Proponents: Bill Murdock, a member of the Gallatin County Commission, spoke in favor of the bill. He presented written testimony from the commission. **EXHIBIT (nah54a04)** He pointed out existing law was not that appealing for either the agricultural producer, landowner, environmental community, etc. It polarizes them. You either have zoning or you have unrestricted development. This bill is the first piece of legislation he had seen that provided an option that gives developers or Ag producers the opportunity to create value and transfer development rights, and stay in farming and ranching. It also lets the developer have an incentive. There are onerous subdivision regulations which, depending on what the county choose, would allow a relaxation of those standards. It also would give the local government an opportunity to direct development and encourage it in places which are more cost effective, more friendly to service delivery than what is done presently. He presented written testimony from the Madison County Commissioners. **EXHIBIT (nah54a05)** He quoted "the bill would inspire agriculture land owners to stay in farming and ranching by giving them the option to sell off their development rights." He referred to letters from Park County Commission in support. He quoted from their letter, "This would give another tool for local control of land use planning. It would have additional planning options to preserve agricultural land." **{Tape : 1; Side : B; Approx. Time Counter : 0.1 - 1.3}**

Jamie Doggett, Meagher County Commissioner and a rancher from west of White Sulphur Springs, spoke in support of SB 383. She said the bill created value for agricultural producers by allowing them to keep their land in production while selling off the development rights. This cluster provision is a good alternative to zoning. Only counties who adopt a growth policy or master plan may choose it. The bill encourages development patterns to preserve Montana's open spaces without regulations. She said she was pleased with the public participation aspect of the local option process that members of the community and county have a say in what happens. She pointed out their county was beginning to see growth like this and this bill made options available. **{Tape : 1; Side : B; Approx. Time Counter : 1.3 - 2.7}**

Donna Sevalstad, a Commissioner for Beaverhead County, spoke in support of SB 383. She said this was a local option for counties who wished to address development issues. The bill would provide for an innovative local option to deal with development pressures as they arise, while at the same time providing a tool for preserving agriculture operations and open space. She pointed out she like this because it was optional. This gives the people who want this the opportunity to have it but does not force it on anyone. **{Tape : 1; Side : B; Approx. Time Counter : 2.7 - 3.6}**

Dale Beland, Gallatin County Planning Director and representing the Montana Association of Planners, spoke in support of the bill. He urged the committee to support the bill. He pointed out that SB 383 does not eliminate any portion of the current subdivision process. It simply provides an additional optional process for those counties who choose to use that as a way to address growth pressures in their county. It provides an alternative under those conditions and only on the stipulation that the county choosing to use the local option, adopt a strong, local growth policy which addresses all the issues, such as citizen review, primary criteria review, attention to open process, definition of growth principals, etc. He said what he liked best about this, as a planner, was that it brought those agricultural landowners to the table at the time of greatest impact-which is the definition of the local growth policy. If they are interested in having their county use this local option tool, it gives them a reason to come forward and help make the plan, help define the growth areas, help define the conservation areas and address all of the issues of concern-environmental or whatever, in the most comprehensive way. That way the current situation is avoided which many times is nothing more than a series of cat fights for every individual subdivision plat. This bill would allow the transfer of development rights in areas without zoning. Many people have asked why that was appropriate.

You already have TDR's in your county and a few zoning districts. That is correct, however, many areas are constrained because zoning is not desired, wanted or even tolerated. This bill provides a way to avoid that zoning limitation and address the issues in a more comprehensive way. He stressed that this was an alternative, it is not an exemption from subdivision review, it does not eliminate the opportunity for a full and necessary public participation. This encourages all of the citizens of the community, those who own the land, those who are concerned about the land because they live next to it. It gives them all a very strong reason and incentive to sit down together at the table and to adopt a growth policy that is mutually acceptable so that the future is more predictable. This will help minimize conflicts. This bill responds to the needs of high growth counties. For those counties that do not have that challenge, it does not present any mandates. It allows them to continue as they are. They are not required to do anything that they are not already doing. He urged the committee to support the legislation. **{Tape : 1; Side : B; Approx. Time Counter : 3.6 - 7.6}**

Tom Milesnick from Belgrade, Chairman of the Open Lands Board in Gallatin County, spoke in support of the bill. He said they worked with the county commissioners and citizens of the county to preserve natural lands and encourage the economic viability of agricultural productive land. This is accomplished through voluntary programs which insure the protection of open space land either in perpetuity or in terms of years through the identification or establishment of funding resource tax measures and other incentives. He described his group and their goals. Clustering is one tool that in populated counties will work for the benefit of everybody that is in the county. He said he was a landowner in Gallatin County, owning about 1500 acres, and 5,000 acres in Park County. He planned on staying in agriculture forever. He said the biggest advantage he saw to the bill is that maybe his neighbors would take advantage of it so he would not have a subdivision next door. He encouraged support of the bill. **{Tape : 1; Side : B; Approx. Time Counter : 7.6 - 9.4}**

Nancy Flikkema, Gallatin County Open Lands Board and representing her family, spoke as a proponent. She said their family operated Little Creek Farms west of Bozeman, where the potential growth in commercial and residential development is almost overwhelming. This is an area of some of the most productive ground in this state. For most farmers, their land is their retirement account. Until now, the only option has been to sell to developers since land prices have gone well above agricultural levels. She pointed out that those who have worked for years to see that the land is productive, want to see it covered in concrete. Senate Bill 383 finally offers an option to those who are in

agriculture, fully support, a chance to save this land either through clustering or by selling development rights. **{Tape : 1; Side : B; Approx. Time Counter : 9.4 - 10.6}**

Bob DeWitt from Manhattan and a member of the Gallatin County Open Land Board, spoke in support of the bill. He explained his background was as a farmer in northeast Montana and he had many years in the agricultural and grain lending business in Great Falls and Manhattan. He said besides lending to farmers, he lent to developers and was very aware of the challenges and problems each sector of this society is facing as far as urban sprawl. He saw the negative impacts from the agricultural standpoint and from the people who are primarily interested in preserving habitat for wildlife. He said there are very few winners the way the law is now with all its restrictions. He urged support from the committee for SB 383 since it does give those who are involved in planning and in various sections of the economy a very good tool to try to help maintain some open space on a voluntary basis rather than a heavy handed basis in the areas that are facing such heavy development pressures. **{Tape : 1; Side : B; Approx. Time Counter : 10.6 - 12.2}**

Jane Jellinsky, representing the Montana Association of Counties, spoke as a proponent. She said their subdivision committee studied this bill and they voted unanimously to support it. The provisions in the bill are optional. They give counties local discretion and new tools and the opportunity to be innovative to try something new to preserve open space and agriculture. She said the opponents would tell you this can already be done under zoning, however, the fact is that zoning is not a politically feasible option in the majority of counties in this state. She stated, all you have to do is say the "z" word in some counties and you are run out of office. It is absolutely impossible to do. **{Tape : 1; Side : B; Approx. Time Counter : 12.2 - 13.4}**

Mona Jamison, representing Gallatin County, supported this bill. She pointed out reasons the bill was needed. She suggested taking a drive from Helena to Big Sky. "You will swoon, when you pass those golden fields on your way to the Four Corners. Then you hit the Four Corners and start going to Big Sky and you say to yourself - if you are the only in the car 'when did this go up?', 'when did this go up?', 'what is happening?' 'look at all those homes there!'" She said she was not a farmer-rancher but could still appreciate the basis of the economy of the state and the beauty of agricultural land and open space. She said she makes trips to Big Sky once or twice a month and sometimes in a four week period, there has been massive development. There is good agricultural land being sold off for subdivisions. She pointed out the reason why this was happening, because farmers

and ranchers can't afford to stay in business. That is why this bill is here. She explained through an optional basis, this would create an incentive system whereby a developer buys a transferrable development right from an owner of a designated preservation area, be it agriculture or open space, and receives the right in exchange for that purchase to concentrate buildings on smaller lots, thereby reducing the capital and maintenance costs for infrastructure through concentration of public services. This is voluntary. If you don't have the growth policy or the master plan you can't do it. She pointed out this was market driven and government had nothing to do with the establishment of that price. She said if the developer wanted to develop in an already designated preservation area, in agriculture and you want to sell your agriculture land, you are free to sell and you are free to put a subdivision on that agriculture land. It may not be good for the land, but you are free to do it. The amendment is clear, that you cannot deny a regular subdivision if the farmer wants to sell it for development. A subdivision cannot be denied because they did not go along with a transferrable development right idea. However, the option would be available for the farmer or rancher as they would be able to sell their development rights. The developer would get greater development in a growth area and maximize profits, and the citizens of the state would be provided open space through the preserved land and the habitat that it provides for the animals. She said the opposition would say why bother, you can do this under zoning. She said this was true, however zoning just doesn't happen. It is highly unrealistic. You will also hear fear about transferrable development rights, since it is a new term in Montana. Other states are doing this where they are taking steps in the attempt of preserving prime agricultural land. The Chesapeake Bay area, farmers and ranchers started to get this issue going because prime agricultural land was being sold off to development. The term is not new in the United States. People can still subdivide under the normal subdivision law if they want. It is important to understand that this is voluntary and if it is done right, this will provide a mechanism for preserving agricultural land that now is seen to be vanishing and in some areas at a faster rate than others. This is an opportunity to act today. If we wait, we will loose more of this land in more areas of the state. When you know that you can be assured, that the public will be involved in the development of a growth policy and the designation of these areas, it insures good decisions. She urged support of the bill. **{Tape : 1; Side : B; Approx. Time Counter : 13.4 - 25.8}**

Opponents: Alan McCormick, Chairman of the Montana Association of Planners, discussed his views. He said the intent of the legislation was sound. The Montana Association of Planners

supports the use of transferrable development rights and definitely support the use of cluster subdivision techniques for the preservation of agricultural land. The term "transferrable development rights" is not a new term. Lewis and Clark County has had on the books a voluntary agriculture land conservation programs, a provision for doing transferrable development rights, since 1982. These rights have been used in many, many states, by transferrable development rights - through zoning. He pointed out, whether or not you like zoning, the zoning statutes in Montana give citizens a very important power, and that is the power of protest. If the county wants to establish zoning, or the citizens petition to create that zoning, you have a specific system that is in statute to protest the establishment of that zoning district. If the intent of the bill is sound, why would the Association of Planners be against it? If you are in that area that is targeted for growth, you suddenly don't have the ability to protest the type of system created in that area that is going to receive those growth rights. He pointed out that developers and Realtors are always saying that local governments are inappropriately using comprehensive plans as regulatory documents. If a county chooses to implement the provisions of this bill, it would require that your comprehensive plan become a regulatory document. It does that because you are not using zoning. You must specify in your comprehensive plan a mechanism for creating that transferrable development right system-where the preservation area is, where those targeted rights go. You must follow that system in the comprehensive plan. That becomes a regulatory document that has to be followed. He said TDR's are defined as unused development potential, that can be voluntarily transferred from a parcel to an area where growth is encouraged. The bill also provides specific exemptions from certain aspects of the subdivision regulation, such as exemption from the environmental assessment. He pointed out that each subdivision needs and deserves to be reviewed on its own merits, particularly if increased density of undetermined amounts may be transferred from a preservation area into an area that is targeted for growth. If you choose to adopt this bill, the parcels that are preserved in exchange for transferrable development rights must contain at least 40 acres of agriculture open space land. He asked-why limit it to that? Depending upon the needs and the opportunities identified in your growth policy, it may be advantageous to allow a TDR system on parcels that are smaller than 40 acres or are zoned for other uses. Why not give the option to take it off of ten acres or five acres and transfer those. The intention of the bill is sound, but in effect the drafters of the bill are limiting how they can use transferrable development rights and they are defining how cluster developments have to be used. That severely limits a technique that is very appropriate. Cluster developments shouldn't be allowed only in targeted growth areas. They should be allowed anywhere where you

can cluster develop off of agricultural lands. If you have 1,000 acres, why only sell off those rights into a growth area? Why not concentrate a development on ten acres or 100 acres, don't limit yourselves by the provisions of this bill. He pointed out the bill puts inappropriate limits on TDR's and cluster subdivisions substantively so they become ineffective. It defines how cluster developments have to be done if you choose to implement this. A lot has been said about this being an option. Everything in this bill is an option. He pointed out this was incorrect. The ability to create an alternative subdivision review is an option. Not all of these provisions in the bill are an option. Section two has amendments to the statement of purpose to the subdivision chapter. If this bill is passed, every county and city in this state must adopt the following provisions. You must allow cluster developments, you must promote the preservation of agricultural land, you must promote the preservation of open space land, and you must promote fiscally responsible growth management. The Montana Association certainly supports most of those ideas, however that is suddenly mandatory in the subdivision regulations. That is not an option, but becomes mandatory. In section three, number two, cluster development means a subdivision of parcels clustered in groups of five or more parcels that is designed to concentrate building sites. This defines cluster subdivision. Currently, it is not defined under law. If you want to do a cluster subdivision of four lots, suddenly you can't do it. This is mandatory. You must adopt this as part of your subdivision regulations. It is not an option.

McCormick continued. TDR's are already allowed. Cluster subdivisions are already allowed. You can set up a provision in your subdivision regulations, and most counties and cities do--they allow for planned unit developments, that's clustering, and it is not bound by the provisions in this bill, so you can already do clusters and transfer development right systems. Zoning is impractical for a lot of places, but at least, even if you don't like zoning, it provides for a protest period and a protest ability that this bill would eliminate with respect to TDR's. Transferrable development right systems and clustered subdivisions are currently allowed by other state statutes, SB 383 may create significant conflicts from a practical standpoint because you would then have two areas in the statute that define what clusters are and planned unit developments; that will provide TDR's in one system and also in another system. He noted it was inappropriate to require your comprehensive plan to become regulatory by requiring your subdivisions to address zoning issues under the guise that zoning is impractical and can't be accomplished. **{Tape : 1; Side : B; Approx. Time Counter : 25.8 - 35.1}**

Steve Snezik, representing the Montana Association of Realtors, said they also opposed the bill. He pointed out the bill would not save agricultural lands in Montana. He said they were in opposition because they did not know enough about the transferrable development rights concept. He acknowledged the concept worked in other states but not enough was known. He suggested this issue be studied by EQC with research and information gathered as to what language implements this. **{Tape : 1; Side : B; Approx. Time Counter : 35.1 - 37}**

Anne Hedges, representing MEIC and Janet Ellis of Montana Audubon, spoke against the bill. She said there were good ideas but there were also some problems that needed to be addressed. She pointed out when there was a transferrable development right you will be identifying how much development is appropriate. She pointed out if the free market was allowed to make the decisions then how could those decisions be analyzed in a growth policy which comes before the transfer of the development rights. She felt the bill was not clear. Putting the TDR definition in the statute would affect all counties and may not be beneficial to all counties. She was concerned about parkland dedication. The incentives for clustering land would be to get out of an environmental assessment, get out of the review criteria of the public interest criteria and get out of the parkland dedication requirement. The open land is assumed to be preserved. But the open space is agricultural land that the public can't use and has no value to people living in a high density development with kids. The bill also allows term easements on the open space. The problem with this is fifteen years later, you could develop that property. The cluster area would have no parkland. **{Tape : 1; Side : B; Approx. Time Counter : 37 - 45}**

Craig Sweet, Legislative Director for Montana Public Interest Research Groups, discussed concerns about the bill. He pointed out problems of misinterpretation of what it means to transfer a development right, especially when there is no underlying zoning. In a community like Missoula where 95% of the city is zoned, there are development rights that people have purchased and they feel that because they own those rights, they can apply it to the land they own. However, the zoning determines how many units can be built on a piece of property, not how many development rights you may have bought. The bill requires that you have growth policies identified for the appropriate densities for where these transfers are going to come into, the receiving areas. But do you determine what the densities will be before they are accepted or what the potential of the development rights being transferred in will have. Another area of questions, when you transfer development rights off the piece of property, you can no longer develop it. You have to put it into an easement. If you put it

into a term easement, in fifteen years that easement is gone. The only way you develop it is to figure out somewhere to get more development rights, transfer them from someplace else or another parcel. If our intent is to leave the Ag land as Ag land, then maybe we should strike the term easements and just have easements in perpetuity. The intent is to keep this as open space and preservation. Exemptions from any environmental assessment is also a concern. If there is an area designated as a growth area and there are some ideas as to how great the density will be, then bring in added density from the transfer of development rights into that area, we could end up with more density than originally identified for that particular growth area. This would create a new set of problems. These areas should have environmental assessments because the whole idea of what the density would be has changed on that property. He suggested looking at these issues to improve the bill. **{Tape : 1; Side : B; Approx. Time Counter : 45 - 48.3}**

Questions from Committee Members and Responses: Rep. Younkin asked Mr. Beland about growth areas in Gallatin County. Mr. Beland replied there had been no opportunity to raise the issue of what were appropriate growth areas for the county. That decision is at the heart of the whole proposal. It would create an opportunity for all the land owners from all sectors of the public interest to sit down and raise that issue and make those decisions on what are appropriate growth areas. Rep. Younkin asked how the process would work on a piece of agricultural land. Mr. Beland described an option, based on what was defined as a growth policy and the criteria for TDR's and the revised subdivision regulations. Rep. Younkin asked about the 4,000 parcels in Gallatin County of 20 acres or less that were ready to be built on. She described the possibility that some of these parcels were owned by a rancher who may be 65 years old and had no money in the bank and this was considered their retirement. She pointed out, in the next two years, half of those would be built on if this issue was not addressed. She asked what he would suggest. Mr. Beland replied that one alternative was to pass this bill and the other was to look at the Agricultural Heritage Program which would provide more funding for conservation, so there would be money out there to buy the rights on those parcels. He said implementing this bill alone would not be practical. Gallatin County's comprehensive plan does not meet the new standard for growth policy review. It would have to set up a transferrable development right system outside of development and create that system. Rep. Younkin asked how long it took to get zoning done. Mr. Beland replied "a long time". Rep. Younkin pointed out you may or may not get it zoned. There are not many willing participants when it comes to zoning. She noted that drastic action was needed right now or the beautiful

valley would all be subdivided. She knew lots of people who had no where to go except to sell those twenty acre parcels that they are sitting on. Mr. Beland agreed. However, you have to create a market that somebody wants to buy these rights. If you simply have a growth area, that targets growth, it may be zoned for 15 houses or 15 development units, there is no incentive to buy rights to transfer into that area. There is no incentive to do that because the developer can already get quite a return for his money in that growth area. If he zones, or otherwise designates that growth area for one house per ten acres-suddenly there is an incentive to buy development rights because he would get to boost the density. Without that system, this may be an option, but if there is no market driven reason for buying extra rights the developer would not buy them. Rep. Younkin asked if a rancher would be able to transfer their own development rights on their other nine parcels onto one corner and develop that one corner themselves. They could sell that two acre parcel for the same price that they could have sold the twenty acre parcel and save what they are making their money off of-on the agricultural portion. Mr. Beland said this system could be done right now, even without zoning. This bill does not provide for that. If you take the example of 200 acres where there are ten-twenty acre parcels, the bill does not provide for you to transfer all of those existing parcels into one corner of the property. This bill requires that you set up a preservation area and a targeted growth area, where you are taking them from here and applying them here. Unless your parcel crosses both of those boundaries, you can't transfer them. If your parcel is only over here, in the preservation area, you can only transfer those rights over here. You can't move them into the preservation area. **{Tape : 1; Side : B; Approx. Time Counter : 48.3 - 57.6}**

Rep. McGee asked about the Agricultural Heritage Program. He discussed boundary line relocations. He asked if the bill applied to rural subdivision acreage. He asked about dividing a 200 acre parcel and could subdivide into 20 acre parcels in a minor subdivision process or do it a different way and cluster develop into 5 one acre parcels or 5 two acre parcels, what would be the disadvantage of doing a cluster concept like this example. Mr. Beland said the disadvantage for the individual would be an individual choice, either financially or economically. The advantages for society, the neighbors, for the planning system or the infrastructure costs to the county are a different consideration. Cluster development means you can have one road going in, for ambulances, fire trucks, and services, or you can have numerous roads scattered out over twenty acre parcels. You can do that now. **{Tape : 1; Side : B; Approx. Time Counter : 53.1 - 62.9}**

Rep. McGee asked about DEQ review. Today you can do those five 20 acre parcels and have only the county government deal with the subdivision process, but by doing it according to the clustering idea DEQ needs to review it. Mr. Beland replied that concerns about public health and safety, specifically sanitation subdivision, would still be reviewed as required. A more adequate and timely review is needed since many concerns about areas that are susceptible to septic problems would come up in the review and adoption of growth policy areas. An area which is defined for growth policy would be considered as being capable of supporting whatever waste water treatment is proposed. Rep. McGee clarified that the growth development policies would take into consideration some of the environmental concerns, not just the 76-3 concerns. Mr. Beland replied the intent of growth policy planning, especially in SB 97, are to address specific concerns about where should growth occur to be responsive to all those concerns, primarily public health and safety, and all the other environmental concerns. He said he heard today, reluctant opposition from the building industry, reluctant opposition from the environmental community, and concern about details that are not fully defined. The reason for that is this bill puts the responsibility for the definition of particular details at the local level as an option. This bill would provide options to the county who chooses to have this and the landowner who would like to have other options, the people who are coming to live in the county because of the quality of life, and it provides a reason for them to sit down and specifically address those concerns in a comprehensive way, up front. **{Tape : 2; Side : A; Approx. Time Counter : 0.2 - 3.1}**

Rep. Story asked Mona Jamison how a county would determine the number of development rights. Jamison replied it would be through the public hearing process where they get input and the most productive areas identified in terms of agriculture. She pointed out if it didn't work right, this would not be implemented. Rep. Story noted the concern would be from neighbors. Ms. Jamison pointed out the public hearings would be required for the development of the growth area. A neighbor would have the opportunity for input. Rep. Story asked about mandatory aspects of the bill. Ms. Jamison said this was part of the incentive system to the developer to purchase the development right and to be able to go into the designated growth areas and maximize density. The public hearing process addresses concerns during the identification period of those areas. There would be incentives to build near infrastructure. Rep. Story pointed out there were some concerns when you sell development rights off a conservation area, then if a person decides they want to go back and develop that area, how would they do it. Ms. Jamison explained there would have been public input in the identification of the preservation and growth areas. There is

nothing to suggest that even within a preservation area, that there would not be areas identified for clustering. The purpose of this is not to put the farmer in a position where they are forever locked in. You can have a very huge parcel designated for preservation and then designate a smaller area for clustering. That is possible under this bill. In terms of the temporary easements versus permanent easements, the temporary easement was viable and realistic for this bill. You could go through the court and asked that the easement be extinguished if the underlying purposes of the original easement were no longer being met. **{Tape : 2; Side : A; Approx. Time Counter : 3.1 - 9.5}**

Rep. Erickson asked about concerns from the Missoula Planning Department. Missoula County could choose not to do this and could continue doing things the way they have in the past. He noted that TDR's and clusters have been worked on for the past five years. He asked if clusters could be changed. Some sections say cluster development should be located within growth areas. Park dedications may not be required but they are important to have in density areas. Clusters would not have to be tied to TDR's. He asked if there could be changes made that would improve the bill. Sen. Hargrove pointed out it was extremely important to do something. Every two years if nothing is done, it was like being obstructionists. We are not looking at future generations or the welfare of the people of Montana. He noted that you could do cluster development now. This bill would give professional people, who are certified in planning, some flexibility. We get public input, and come up with something that has been debated and voted on and scientifically looked at and studied. **{Tape : 2; Side : A; Approx. Time Counter : 13.5 - 20}**

Rep. Gutsche asked why other states did TDR's under zoning. McCormick replied that Maryland was the pioneering state for TDR's. Zoning has the connotation that zoning determines the specific use and the specific density for parcels. Zoning is simply an enabling legislation that allows you to implement land use regulations. Zoning could be as simple as saying you want to set up a TDR system. It simply allocates development rights of parcels. That is the mechanism by which these other states have employed TDR systems. They haven't necessarily said that zoning in these areas mean grocery stores here, houses here. They simply said the TDR must follow the enabling legislation of zoning. It is important because of the zoning protest side. If the bill is implemented and the TDR system set up, there are two public hearings required to do that, one before the planning board with your comprehensive plan and one before the county commissioners and there is no ability to protest it. At least

under zoning, you have to go through the planning board, county commissioners, zoning board and there is a specific mechanism to protest. **{Tape : 2; Side : A; Approx. Time Counter : 20 - 27.4}**

Rep. Gutsche asked if public input was addressed in the bill. Mr. McCormick replied there was public input opportunities. The distinction was in the type of public opinion. Public input into the subdivision is maintained in the bill. However, it does change the level of public opinion for establishing a TDR system. There could be less public opinion for a TDR than under current zoning enabling legislation. **{Tape : 2; Side : A; Approx. Time Counter : 27.4 - 28.5}**

Closing by Sponsor: Sen. Hargrove closed. He pointed out the top down zoning would not happen in Montana. This would give incentive to do things. Zoning and money are government controls. This is all market driven. He said the bill was not regulatory, and did not have that intent. He described problems with the current twenty acre subdivisions where there were twenty roads for twenty houses. He pointed out the people who were denying the subdivisions now were the planners. This was an opportunity for the planners to do it the other way around, to look at the whole thing scientifically. He said micro-management should be guarded against. **{Tape : 2; Side : A; Approx. Time Counter : 28.5 - 42.5}**

EXECUTIVE ACTION ON SENATE BILL 235

Rep. Ohs **MOVED DO CONCUR** ON SB 235.

Rep. Harper said the bill took the place of a reserved water right for a municipality. He was concerned about the inclusion of private entities in the bill. He **MOVED** an amendment.

Rep. Younkin said she would resist the amendment. She said it was the right that was being protected, not the owner of the right. This bill was specific to a municipal right on an A-closed stream. It doesn't matter who owns it, it still gets used for the same thing. Rep. McGee pointed out if you eliminated "private" you would eliminate the Missoula water entity that takes care of the municipal facilities. Rep. Harper felt this was separating a category of rights that did not need to be there. Rep. Eggers clarified that the right should be in the public sector, not in the private sector. **{Tape : 2; Side : A; Approx. Time Counter : 42.5 - 48.4}**

The question was called on the amendment. Rep. Harper felt a separate, publicly owned water right was inconsistent. Rep. Tash

said the amendment was not needed. One of the purposes was to encourage joint venture between government and private entities. There are a lot of examples where private entities could do a better job with a public service and this was one prime example.

{Tape : 2; Side : A; Approx. Time Counter : 48.4 - 50.3}

The question was called on the Harper amendment. The amendment failed 16-4 with Reps. Hurdle, Ewer, Erickson and Harper voting yes.

The question was called on SB 235. The motion **DO CONCUR PASSED** 19-1.

EXECUTIVE ACTION ON SENATE BILL 97

Rep. Eggers **MOVED DO CONCUR.**

Rep. McGee said he was opposed to the bill. This would result in statewide zoning. He felt this would remove the last visage of private property owner rights in the state of Montana. **{Tape : 2; Side : A; Approx. Time Counter : 59 - 60}**

Rep. Tash pointed out the EQC had studied this issue. Growth management was needed rather than trying to enforce subdivision laws that have proven to be not as effective as what they were intended to be. **{Tape : 2; Side : A; Approx. Time Counter : 60 - 62.2}**

Rep. Erickson **MOVED** the Kadas amendment. **{Tape : 2; Side : B; Approx. Time Counter : 1.6}**

Rep. Raney said he was against those amendments. The reason was it defeated the purpose of the bill. Now it says you will do a planning process but the neighborhood is exempted. Mary Vandenbosch had prepared the amendment.

Rep. Tash said the example for the need of the bill was the painful turf battle process from Missoula. He was opposed to the amendment.

Rep. Ohs commented that the amendment was incomplete and he did not know the effect to the bill.

Rep. McGee **MOVED TO TABLE** the bill. The motion **FAILED** on a 10-10 vote.

Rep. Eggers **MOVED** the Kadas Amendment. The motion **FAILED.**

Rep. Hurdle **MOVED DO CONCUR** SB 97. The question was called on the bill. The motion **PASSED** 11-9 on a roll call vote.

EXECUTIVE ACTION ON SENATE BILL 96

Rep. Raney pointed out this bill was studied for two years in the EQC process. He **MOVED** to amend line 16 and strike the word "voting" and reinsert "all". Two people could vote. This way it would take 3/5 of all the members of the council to vote.

EXHIBIT(nah54a06)EXHIBIT(nah54a07) {Tape : 2; Side : B; Approx. Time Counter : 15.3}

Rep. McGee pointed out the suggestion by Kerwin Jensen was 2/3 not 3/5 and also 20% on line 17. He asked if these amendments should be voted separately.

The question was called on the Raney amendment that referred to the voting members. The motion **PASSED** unanimously.

Rep. McGee **MOVED** the bill as amended. He offered an amendment on line 15, to change the 3/5 to 2/3 and on line 17, change the 40% to 20%. Rep. Younkin asked that these be segregated to vote on them.

The question was called on striking 3/5 and inserting 2/3. Rep. Raney pointed out these changes would mean minority rules.

{Tape : 2; Side : B; Approx. Time Counter : 15.3 - 19.1}

The question was called on the 2/3 rather than 3/5. The motion **PASSED** 13-7.

The question was called on the 20% from the 40%. Rep. McGee explained what Kerwin Jensen was trying to show with the diagrams, was the bill was crafted so the ambiguities would clear up. The 20% would eliminate the quadrants and makes it easier to protest.

The question was called on the 20% amendment. The motion **PASSED** 18-2 with Reps. Tuss and Ohs voting no.

The question was called on the bill as amended. The motion **PASSED** with four no votes by Reps. McGee, Wagner, Hurdle and Ohs voting no. **{Tape : 2; Side : B; Approx. Time Counter : 19.1 - 23.3}**

ADJOURNMENT

Adjournment: 6:44 P.M.

REP. BILL TASH, Chairman

DEB THOMPSON, Secretary

BT/DT

EXHIBIT (nah54aad)